Supreme Court, U.S.
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IN THE

Supreme Court of the United States

Nos. 70-5033 and 7[redacted]

EARL A. LOVE, *Petitioner,*
and
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
and
THE UNITED STATES OF AMERICA, *Intervenors,*
v.
THE PULLMAN COMPANY, *Respondent.*

UNITED STATES OF AMERICA AND EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Petitioners,*
v.
THE PULLMAN COMPANY, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

ANSWER BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

INTRODUCTION

Section 706(b), Title VII, of the Civil Rights Act of 1964 provides that "no charge" of discrimination "may be filed" with the United States Equal Employment Opportunity Commission (EEOC) until it has first been filed with the state agency empowered to seek relief from employment discrimination, if one exists, and until 60 days have expired

or the state agency has terminated its proceedings, whichever is earlier.[1] In addition thereto, Section 706(d) requires that the charge be filed with the EEOC within the earlier of the following time periods: (1) 30 days of receipt of notice that state proceedings have been terminated, or (2) 210 days after the alleged unlawful employment practice occurred.[2]

QUESTIONS FOR DETERMINATION

Was the District Court without jurisdiction to entertain Love's suit because Love made his charge directly before the EEOC instead of filing it with the state as required by Section 706(b)? Did the act permit EEOC to orally advise the state that a charge had been filed with it; then assume jurisdiction to process the charge by manipulating the filing date when no further authorization was either sought or received from Love during the 30-day period prescribed by Section 706(d)?

STATUTORY PROVISIONS AND REGULATIONS INVOLVED

The pertinent provisions of Title VII of the Civil Rights Act of 1964 and the Regulations of the Equal Employment Opportunity Commission are set forth in Appendix A of this brief (Br. App. A) *infra*, pp.

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[1] The EEOC's general counsel has determined that the Colorado statute (CRS 1963 80-21-1 et seq.) constitutes the type of fair employment practices law which the Congress anticipated when it passed Section 706(b). See G.C. Interpretative Opinion numbered 667-65; LRX 1892e.

[2] Since the petitioner's position is apparently predicated upon the so-called waiver letter of Mr. Reynolds, dated June 1, 1966 (App. 8) as constituting the termination by the state, the 210-day period could not seem to be an issue in this case.

STATEMENT OF THE CASE

FACTS

Earl Love is a black man, formerly employed by The Pullman Company for many years as a porter, and who for several years of his employment had been a "porter-in-charge." (A. 52) In May of 1963, prior to the effective date of Title VII of the Civil Rights Act of 1964 (it became effective July 2, 1965) Love and others filed a written complaint with the Colorado Civil Rights Commission claiming racial discrimination as prohibited by the Colorado Antidiscrimination Act of 1957 (Chap. 80, Art. 21, Sec. 1, et seq. 1963 CRS) existed at the place of his employment, and that The Pullman Company had been discriminating between its porters-in-charge and Pullman conductors on account of their race. Although the record is not clear as to the disposition of this complaint, it appears that the Colorado Civil Rights Commission concluded the charge was not warranted and did not pursue it. (A. 39)

In the summer of 1965 Love returned to the State Civil Rights Commission and orally reiterated the same complaint. (A. 36) Thereupon the Commission's State Director took the matter up with The Pullman Company representative in Denver and was informed that Love would be promoted to conductor at his request, but that he would thereby lose his seniority under the existing labor agreements, go to the bottom of the conductor's seniority list, and likely be without a job. This information was communicated by the Director to the Colorado Civil Rights Commission and by letter dated July 30, 1965 to Love the Director advised Love (the Commission itself had determined to take no action) that the Director would pursue the case to an end if Love was so inclined. (A. 48) Thus, even though he was offered the further services of the State Civil Rights machinery on June 30, 1965, Love lost all interest in further state action, and there were no further contacts between Love and the State Commission subsequent to July 30, 1965.

Although it was not a part of the record in the District Court and not considered by it, the Petitioners have produced as an appendix to their respective briefs herein, a letter written by Love to it dated May 19, 1966, which they now contend is the charge upon which this action was initiated.[3] The trial court, although it did not have the letter of May 19, 1966 before it, determined from the evidence that Love had first visited the EEOC in May of 1966.[4] (A. 14)

Although required by the administrative interpretation of Section 706(b) of the Act in force at the time (LRX 1892e) and contrary to the terms of the regulation then in force (30 Fed. Reg. 8407) the charge was not sent to the State Commission for exercise of exclusive jurisdiction for the 60 day period, but rather filed when received by EEOC on May 23, 1966. However, in some manner, not entirely clear from the record, it appears the State Commission was orally advised by the EEOC that a charge had been filed with it for on June 1, 1966 (A-8) the State Commission advised EEOC that Love had been to the State Commission, lacked confidence in it, did not file a complaint with it, and accordingly would waive the sixty-day deferment period and suggested that EEOC proceed to give Love relief. (A-8)

No further action or affirmative steps were taken by the EEOC, Love or The State Commission until July 23, 1966, when a formal charge was sworn by to Love and filed with EEOC (A. 9-11).

The EEOC then proceeded to investigate the charge and their "Final Investigative Report" (A. 52-55) concluded that The Pullman Company was not in violation of Title VII of the Civil Rights Act of 1964 as far as wage discrimina-

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[3]Love Br. App. Ex. 1, p. 1a; USA & EEOC Br. App. B, p. 39.

[4]The EEOC "Decision" finding probable cause and EEOC "Final Investigative Report" which were before the trial court reflect the charge was filed May 23, 1966 (A. 49, 52).

tion was concerned; that porters-in-charge do not have the same responsibilities as Pullman conductors; and recommended the Commission find that there was no probable cause to believe that the charge made by Love was true. The investigative report did recommend, however, that the Commission consider the issuance of a Commissioner's charge against The Pullman Company and the Brotherhood of Sleeping Car Porters Union probably because the collective bargaining agreement which existed between the two limited the advancement of negroes to conductor positions. (A. 55)

The Commission, however, chose to disregard the Investigator's Report which had also been approved by the Commission's Regional Director (A. 55) and, on the other hand, found probable cause for believing that Love was the victim of prohibited discrimination as charged by Love.[5] This determination was not made until January 24, 1968 (A. 49-51). Love then filed his complaint in the District Court on May 28, 1968 (A. 1) and by an amended complaint filed November 4, 1968 sought to also convert it into a class action. (A. 2-5)

On November 17, 1968, Love voluntarily resigned his position with The Pullman Company. (A. 14) Effective on January 1, 1969 the railroads took over the sleeping car operations of The Pullman Company and The Pullman Company no longer employed porters, porters-in-charge or conductors.

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[5]The EEOC found that porters and porters-in-charge were an all negro classification and conductors are traditionally all white. It noted that porters are represented by the Brotherhood of Sleeping Car Porters, which had a labor agreement with The Pullman Company, and that conductors are represented by the Brotherhood of Railroad Trainmen. (A. 49-50)

PROCEEDINGS BELOW

A. District Court

The Pullman Company moved to dismiss Love's amended complaint on the grounds that the Court lacked jurisdiction over the subject matter because the plaintiff failed to comply with the sequence of filing requirements set forth by Section 706(b) of the Act and the timeliness requirement set forth by Section 706(d) of the Act.

The trial court held that Love had to exhaust his remedies through the state machinery before the EEOC and the District Court had jurisdiction over the subject matter. It held the state had terminated its proceedings on July 30, 1965, and that since Love had not filed with the EEOC until May 23, 1966, the charge had not been filed in apt time, namely, within 30 days after the state had terminated its proceeding and therefore, both the EEOC and the court lacked jurisdiction over the subject matter. The Court dismissed the complaint.

B. Court of Appeals

(1) *Original Opinion*

The EEOC filed an amicus curiae brief and along with Love argued that the letter of May 19, 1966, started a new chain of events. They reason that they orally advised the Colorado Civil Rights Commission of the filing of this, a new charge, and that within the statutory 60-day period thereafter the Colorado Commission had waived its exclusive jurisdiction. They urged, in effect, that they could hold the charge (the letter of May 19, 1966) in suspense, advise the state of its filing and automatically assume jurisdiction at the end of the deferral period without further authorization from the complainant.

The Court of Appeals held that the device used by the EEOC to start a new time sequence was ineffective for the letter had to be filed when received and could not be held

in suspense which would permit them to manipulate the filing date. The majority of the judges agreed that the charge had been filed on the date received, and at that time the EEOC had no jurisdiction since the complaint had not yet been presented to the Colorado Commission as required by the statute. In so doing they noted the existence of an EEOC regulation stating that ". . . a charge is deemed filed when the Commission receives from the person aggrieved a written statement . . . ." (A. 60)

The majority ruled the complainant had to proceed before the state agency before a charge could be filed with the EEOC and that the filing with EEOC had to be within 30 days after the state had terminated its action. They also held the time periods applied irrespective of whether there were isolated incidents of discrimination or a continuing violation.

(2) *On Rehearing*

The EEOC sought and obtained permission to intervene in the Court of Appeals on rehearing and for the first time argued that since Title VII of the 1964 Act did not become effective until July 2, 1965, that the letter sent Love by the State Commission on July 30, 1965 had to be disregarded. They claimed it could only have application to events occurring before the effective date of the Act and therefore did not start the statutory 30 day period to run. The majority of the judges agreed and reasoned that the State Commission's termination of July 30, 1965 had to be of proceedings relating to events occurring before the effective date of the Act, which events were not within the jurisdiction of the EEOC, but held that the EEOC could not suspend the charge received May 23, 1966, and merely advise the Colorado Commission that a charge had been filed. The majority further refused to permit the EEOC to withhold filings and automatically take, postpone, or resume jurisdiction at its pleasure. The Court of Appeals then affirmed the judgment pointing out that the manipulated

procedures reflected in the record could well, under different facts, penalize compliance as well as reward noncompliance with the requirements of the Act.

SUMMARY OF THE ARGUMENT

Under the express provisions of Title VII of the Civil Rights Act of 1964 Mr. Love was required to:

1. First commence a proceeding before the Colorado Civil Rights Commission in accordance with Section 706(b) of the Act, and

2. Then file his charge with the EEOC within 30 days after the state had terminated its proceedings in accordance with Section 706(d) of the Act.

These prerequisites are precise and unambiguous and must be complied with before the Federal Courts (or the EEOC) have jurisdiction over the matter. It is the contention of The Pullman Company that neither Mr. Love, nor anyone acting on his behalf, complied with either of the above mandates of Congress.

The Pullman Company is hardly unmindful of the fact that Title VII of the Civil Rights Act of 1964 is remedial in nature. Nevertheless, we must not lose sight of the fact that to accomplish its remedial purposes it is vital to stay within the limitations imposed by Congress.

It is well accepted, and not contested by the petitioners here, that prior utilization of the state machinery is a mandatory prerequisite for jurisdiction over the subject matter. Indeed, the regulation of the EEOC in force at the time of the operative facts here recognized that the EEOC could not validly accept a charge for filing if the charging party had not commenced a proceeding before the state Civil Rights Commission. 30 Fed. Reg. 8407, Br. App. A, p. . Similarly, in almost contemporaneous rulings and opinions (LRX 1892e) the EEOC stated that where a charge is filed with the EEOC alleging a discriminatory act in a state to which the EEOC is required to defer, the EEOC will do two things:

1. Refer the charge to the appropriate state agency, and

2. After the deferment period has elapsed, inquire whether the charging party wishes it to "assert jurisdiction" and then will proceed only upon the affirmative request of the charging party.

In other words, EEOC, consistent with the decision below, did not consider that it had jurisdiction over prematurely filed complaints, nor could it automatically assert jurisdiction over such prematurely filed charges until it had received affirmative directions from the charging party after the deferment period had expired. Patently these steps were not followed in the case of Mr. Love.[6]

Strangely enough, petitioners seem to ignore these constructions placed upon the Act by EEOC at the time. Instead reliance is apparently placed upon the amendment to Regulation 1601.12[7] to validate the method by which Mr. Love's charge was handled, and to give sanction to the use of an "oral advise method" in lieu of filing a written charge to commence proceedings before the state so as to comply with Section 706(b); and to give sanction to the manipulation of the filing date with the EEOC from May 23, 1966 to sometime after June 1, 1966, so as to comply with Section 706(d). This cannot be done, for such procedural steps as were taken in the instant case are not even sanctions by the 1968 regulation; (therefore, it is questionable whether the validity of the same is ripe for determination by this court); were not in accordance with the decisions and regulations of the EEOC in force at the time; and, of most importance, are not sanctioned by the Act itself.

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[6]The charge was filed by the EEOC before the state was advised of it; the charge itself never was referred to the Colorado Civil Rights Commission (the state merely being advised that a charge had been filed); no word of any kind was communicated to or received by Mr. Love following the "termination letter" of June 1, 1966 until July 23, 1966—a period of time in excess of that allowed by the Act.

[7]29 CFR 1601.12 adopted in November of 1968 and set forth in Appendix A to this brief at page

Our basic quarrel is not with the EEOC's referral policies, be it by regulation or otherwise, as a proper referral or prematurely filed complaints frankly may be quite laudable. Our quarrel is with the method in which Mr. Love's case was handled. The burden of complying with the mandates of Congress does not rest solely or even initially with the EEOC—Mr. Love had some, if not the ultimate, responsibility in this regard.

Regardless of upon whom the burden of compliance rests, difficulty, if the same in fact does exist, in following the procedures set forth by Congress does not excuse noncompliance, for Congress, after long debate and for well considered reasons, created a new right, and prescribed the means of asserting it. The method used to assist an aggrieved party under the Act, be it by regulation or otherwise, cannot circumvent the mandate of Congress, nor can the agency itself manipulate the procedure as was attempted here. As stated by Chief Judge Lewis in his concurring opinion on rehearing:

> "... admittedly those persons seeking relief under the Act are usually uninformed as to procedural necessities, often present their problem in letter form, and directly to the Commission, and so need regulatory or legislative protection to preserve their basic rights against unnecessary procedural bars. But this problem is not unique with this Commission and its solution certainly does not lie in the approval of the manipulated procedures reflected in this record. To do so, might well, under different facts, penalize compliance as well as reward noncompliance with the requirements of the Act." (A. 71)

The result reached by the court below based upon the facts in this case was not "formalistic" as urged by the petitioners. Indeed, it was the only result the court could reach on the facts of Mr. Love's case and be consistent with the clear language of Congress.

ARGUMENT

I. INTRODUCTION

Basically two propositions must be kept in mind. First, is the Congressional mandate of Section 706(b) that an individual in Mr. Love's situation must first "commence a proceeding" before the state body prior to the EEOC's having jurisdiction over the matter.[8] Secondly, even if a proceeding is properly commenced before the state body, Section 706(d) of the Act is quite clear that Mr. Love has only 30 days within which to invoke the jurisdiction of the EEOC after the state has terminated its proceeding.[9]

The simple fact is that the procedures used purportedly to comply with these mandates in the case of Mr. Love were not those as prescribed by the Act. The deferral regulation and policy [even if valid] urged by petitioners as a sanction as to what actually occurred, has no application to this case because it was not followed.

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[8]Section 706(b) provides in pertinent part as follows: "In the case of an alleged unlawful employment practice occurring in a state . . . which has a state or local law prohibiting the unlawful employment practice alleged . . . no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of 60 days after proceedings have been commenced under the state or local law, unless proceedings have been earlier terminated . . ."

[9]Section 706(d) requires that an aggrieved party file his charge with the EEOC ". . . within 210 days after the alleged unlawful employment practice occurred or within 30 days after receiving notice that the state or local agency has terminated its proceeding under state or local law whichever is earlier . . ."

II. THE ADMINISTRATIVE INTERPRETATION IN FORCE AT THE TIME RECOGNIZED THE LACK OF JURISDICTION UNDER THE INSTANT FACTS. THE REGULATION OR POLICY OF THE EEOC URGED TO BE CONTROLLING (adopted 2½ years after the operative facts) HAS NO APPLICATION BECAUSE IT IN FACT WAS NOT FOLLOWED.

The petitioners urge that the "oral advise" method of commencing a state proceeding and the manipulation of filing dates of charges filed with the EEOC are condoned by the deferral regulations and policies of the EEOC and sanctioned by the Act. We do not agree. This method is not sanctioned by any regulation promulgated by the EEOC of which we are aware, nor are such procedures recognized anywhere in Title VII.

On the contrary, at the time Love's charge was filed, counsel for the EEOC had written opinions and the EEOC itself had conceded in a decision that it had no jurisdiction until the charge had been first filed with the State Commission;[10] and further concluded that the complainant must file his charge with the EEOC within 30 days after the conclusion of state action. We believe that by these administrative rulings the EEOC could assert jurisdiction only if it received an affirmative request to do so from the charging party after the deferment period expired. (C.G. Opin. 11/18/65 and 12/2/65; Commission Decision 12/30/65, LRX 1892e)[11]

We submit this administrative interpretation is entirely consistent with the Act and with the conclusions of the

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[10] The pertinent EEOC regulation in force at the time that Mr. Love sent his charge directly to EEOC recognized that it had no jurisdiction for it provided EEOC "may not accept the charge for filing, but shall assist the aggrieved person in complying with Section 706(b)." (30 Fed. Reg. 8407, Br. App. A, p. 4a).

[11] This interpretation is set forth in its entirety in Appendix B of this brief at p. 7a.

Court of Appeals and inconsistent with the position now taken by petitioners. We, therefore, believe a thorough discussion of the interpretation is warranted. The first sentence recognized the clear language of Section 706(b) that "no charge [of discrimination] may be filed" with EEOC until it has been filed with the state agency for it says that "Where an unlawful employment practice is committed in a state to whose FEP agency the Commission is required to defer, Section 706(b) requires that a charge by the person aggrieved be filed first with the state agency." The next sentence concedes that EEOC jurisdiction can only attach after the deferment period of Section 706(b) has expired and then only if the filing is a timely one in accordance with Section 706(d), for its states that

> "If he thereafter wishes the Commission to assert jurisdiction, he may file his charge with the Commission at any time after 60 days . . . from the date the state proceeding was commended or earlier . . . if such proceeding has been earlier terminated, but the charge must be filed not later than 210 days after the alleged unlawful employment practice occurred, or within 30 days of the receipt of notice of the receipt of notice of the termination of the state proceedings, whichever is earlier."

The administrative decision also prescribes the procedure to be followed in the event the charge had been sent directly to it, for it is then stated that when a charge is filed with EEOC alleging an unlawful employment practice in a state to which it is required to defer, "the Commission will refer that charge to the state or local agency." This decision further says that after the deferral period of 60 days has elapsed, EEOC will "inquire whether or not he [the complainant] wishes the Commission to assert jurisdiction. If the charging party responds affirmatively, the Commission will proceed with its investigation." Thereby it is recognized that EEOC needs further word from the charging party for it to assert its jurisdiction. (C.G. Opin. 11/18/65 and 12/2/65; Commission Decision 12/30/65 LRX 1892e, Br. App. B, pp._____.

At the time Love filed his charge the EEOC did not consider that it had jurisdiction over prematurely filed complaints, nor did they believe that it could automatically assert jurisdiction over such prematurely filed complaints and would not do so until it had received a request to assert its own jurisdiction from the charging party after the deferment period had expired.[12] Patently, this administrative interpretation (LRX 1892e) was not followed in the instant matter for contrary thereto and contrary to the Act, the charge was filed by EEOC on May 23, 1966, when it was received by it,[13] the EEOC did not send the charge to the Colorado Civil Rights Commission as required by the Act (the Colorado Commission was only orally informed that a charge had been filed with the EEOC), and Love did not file a complaint with the Colorado Commission as he apparently was advised by the Colorado Commission to do. (A. 8). By letter dated June 1, 1966, the Colorado Civil Rights Commission Director advised the EEOC that it did not intend to proceed with the matter, noting that Love had not returned to file a complaint with the Colorado Commission. (A. 8) Love then had thirty days under the Act and interpretation to file a written complaint with the EEOC, but he did not do so, nor did the EEOC file one on his behalf.

[12]Indeed, as amicus curiae, EEOC recognized the necessity for a further request from the charging party within the statutory period in the event of a prematurely filed complaint before it could assert jurisdiction in *Martin Marquez v. Ford Division of Ford Motor Company*, 61 LC §9332 (cited at page 12 of petitioner Love's brief), the court stating:

> "The question still remains, however, as to when a charge is timely filed with the EEOC when a complaint is received prior to the filing of a charge with state authorities. The EEOC Procedural Regulations, *supra*, only states when the charge will not be accepted for filing. *Plaintiff and the EEOC claim that it is when the Commission received a further request from the complaining party that it assume jurisdiction, in this case* May 1, 1967." (Emphasis supplied)

[13]Perhaps it so held for Love's letter advised the EEOC that he had already been to the State Commission; that it did not understand his objective; and "enclosed a copy of their reply."

Moreover, the EEOC did not inquire of Love, within the ensuing thirty days, whether he wished it to assert its jurisdiction, nor did Love ask it to assert jurisdiction.

Petitioners seem to ignore (or maybe overlook) the above contemporaneous interpretations which, of course, are "entitled to great deference." *Griggs v. Duke Power Company*, No. 124, October Term, 1970, decided March 8, 1971, Slip. Op. at 9, *Udall v. Tallman*, 380 U.S. 1, and rely upon the 1968 amendment to the prior regulation, 29 C.F.R. 1601.12 (Br. App. A, pp. 4a-6a).

In 1968 the EEOC again reasoned when it adopted the amended regulation that complainants might be denied access to the courts if they did not comply with Sections 706(b) and 706(d). They amended the regulation to state that:

> "... persons who seek the aid of the Commission are often confused and even risk loss of protection of the Act. Accordingly, it is the intent of the Commission to simplify filing procedures for parties in deferral states and localities and thereby avoid the accidental forfeiture of important federal rights." (29 C.F.R. 1601.12(a) Br. App. A, p. 4a)

The new regulation then outlined the deferral procedure in greater detail. The new procedure required that the charge initially filed with EEOC be referred to the state commission by its sending a copy thereof by registered mail, return receipt requested, to the appropriate state or local agency; and it further provided that the aggrieved party shall be notified in writing that his charge has been forwarded to the appropriate state agency, and that "unless EEOC is notified to the contrary on the termination of state or local proceedings, or after sixty days have passed, whichever comes first, the Commission will consider the charge to be filed with the Commission and commence processing the case." (29 C.F.R. 1601.12(iii), Br. App. A, at p. 5a)

Thus, the EEOC now says that it is not required to contact the charging party after the deferment period has

elapsed to determine whether he wishes it to proceed with the matter for they had previously notified him that upon the expiration of the deferral period, the EEOC will process the charge unless they have been advised to drop the matter.[14]

However, the EEOC did not even follow this regulation in the instant matter for it neither sent a copy of the charge to the State Commission nor advised Love that it would assert jurisdiction when the deferral period expired unless they heard to the contrary from him. In fact, it candidly admitted that it had not followed its own regulation in this matter in its amicus curiae brief filed in *Wright v. Brotherhood of Railway and Steamship Clerks, et al.*, 3 EDP § 8174 (D.C. Kan. April 5, 1971. In *Wright*, EEOC also urged that its 1968 amended regulation 29 C.F.R. 1601.12 was controlling and said at page 10 of its brief:

> "In *Love* the Commission did not properly follow its procedure [29 C.F.R. 1601.12] and a copy of the charge was never forwarded to the state agency."[15]

Since the EEOC admits it did not even follow the regulation as it had been amended in 1968 we submit the validity of that regulation is not ripe for determination by this court. Nevertheless, we will demonstrate that the regulation so adopted and relied upon by the petitioners contravenes the provisions of the statute, permitting, as it seems to do, the

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[14] Significantly, however, the 1968 regulation tacitly recognizes that the Equal Employment Opportunity Commission has no jurisdiction over charges filed with it prior to their being filed with the state commission, until such time as the deferment period has elapsed. The regulation further requires that the written charge itself be referred to the state commission for appropriate meaningful action. The regulation also requires notice be given to the charging party that the complaint has been referred to the State Commission for action and unless he notifies it not to do so, they will proceed to exercise their own jurisdiction after the deferment period has expired.

[15] We can only speculate why the EEOC takes a different position before this court.

holding of the charge in "animated suspense" for the deferral period and then allowing it to automatically assume jurisdiction without any further request from the complainant after the deferral period had elapsed.

Petitioners assert that the court in *International Brotherhood of Electrical Workers, Local 5 v. Equal Employment Opportunity Commission*, 398 F.2d 248 (C.A. 3), cert. denied 393 U.S. 1021, approved such procedure. We do not agree. In this case, as in the present case, the complainant wrote initially to EEOC. In *IBEW, Local 5* (unlike the present case) EEOC referred to the complaint to the appropriate state agency. After the deferral period, EEOC wrote the complainant inquiring whether he wished it to assert jurisdiction, and he replied affirmatively in writing within the time period prescribed by Section 706(d). This, of course, is entirely consistent with the prior interpretation placed upon the Act by EEOC (LXR 1892e, Br. App. B); it complies with Section 706(b) and Section 706(d) of the Act; and is completely inconsistent with what was done here. In upholding EEOC's action, the court held that the initial letter to EEOC "was not a valid charge when received . . . . for it had not been sent to . . . [the state commission]" and the deferral period had not expired. 398 F.2d 252. The court in *IBEW, Local 5* then ruled that when the complainant's answer to EEOC's letter inquiring whether or not he wished them to assert jurisdiction was received, the charge became an effective charge as of the date of receipt of the second letter which was within the statutory period.[16] Significantly, in Mr. Love's instance, the charge was never referred to the state; nor was Mr. Love's prematurely filed complaint revived by any subsequent direction (written or otherwise) within the statutory period. It is also significant to note that while the court in *IBEW, Local 5* may have approved by implication the prior interpretation of the Act (LRX 1892e) it did not consider nor decide the validity of

[16]The subsequent letter then maintained the proper filing sequence as set forth in Section 706(b) and satisfied the time requirement of Section 706(d).

the 1968 regulation (29 C.F.R. 1601.12) under which they presume to hold the complaint in suspense and take jurisdiction without further written request from the complainant party after the deferral period has expired by manipulating the filing date.

Two district courts have considered the suspended filing procedure, and each rejected it: *Voutis v. Union Carbide*, 321 F.Supp. 830 (S.D. N.Y. 1971); *Jefferson v. Peerless Pump*, 60 L.C. ¶ 9278 (C.D. Calif. 1969). The court in *Voutis* reasoned that the date of filing the charge "is not a matter to be determined by the mental operations of those in the EEOC organization; it is an objective fact, provable by evidence, and at latest is the date on which the charge is received by EEOC." (321 F.Supp. 834) The court in *Jefferson* noted that the rules of the EEOC as stated in the opinion of its general counsel recognized that a charge of unlawful employment discrimination has but one effective filing date, which is when it was received, and stated "the plaintiff's arguments to the contrary would permit the commission to disregard the law at their will and/or whim. . ." 60 LC ¶ 9278.

The Court of Appeals in this case held Love's letter was filed when it was received, noting "Its [EEOC's] own regulation states '. . . a charge is deemed filed when the commission receives from the person aggrieved a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of.'" (A. 60)

The record, likewise, reflects that Love's charge was filed when it was received by EEOC, May 23, 1966. (A. 49, 52)

In the event a charge is prematurely filed there is in reality no action pending before the EEOC because the Act specifically provides that "no charge may be filed" before the deferment period has expired. Section 706(b). This does not mean that a subsequent charge, if timely filed, cannot be processed. See *IBEW, Local 5*, supra. On the other hand, further action is required for Congress precisely so prescribed in Section 706(d) when it said that the charge

"shall be filed . . . within 30 days after receiving notice that the state or local agency has terminated the proceedings." The EEOC is not entitled to circumvent the mandates of Congress, as was attempted here, by regulation, manipulation or otherwise. *Dixon v. United States,* 381 U.S. 68 (1965).

We think the Court of Appeal's correctly reasoned that to permit flexible filing dates and manipulated procedure might well penalize compliance as well as reward noncompliance with the requirements of the Act (A. 70, 71). It should be remembered that a person has only 30 days from the date of the termination of the state proceedings within which to invoke the jurisdiction of EEOC. Section 706(d). Obviously it is possible and quite likely that a person who had followed the mandate of the Act and filed first with the state as required by Section 706(b) would be barred by the time requirements of Section 706(d) of the Act if EEOC did not file the charge when he sent it in, but rather waited for a response from the state. Certainly a precedent should not be established whereby one who complied with the Act is denied his day in court because the EEOC could manipulate the filing dates to save jurisdiction for one who has not complied with the Act.

The EEOC may be well advised to refer prematurely filed charges to the appropriate state agency with the intent of taking jurisdiction at a later time if necessary. However, the referral procedure must meet the statutory requirements which were not followed here.

III. THE PROCEDURE USED DID NOT COMPLY WITH THE ACT

A. § 706(b) Requires a Proceeding be Commenced Under State Law Before the EEOC May Assert Jurisdiction. The Law Requires That a Written Complaint be Filed to Commence Such a Proceeding. No Such Written Charge was Filed. The "Oral Advise Method" Does Not Meet the Jurisdictional Mandate of § 706(b).

It is unquestioned that Mr. Love was required to "commence a proceeding" before the Colorado Civil Rights Commission before EEOC could entertain jurisdiction. The Act itself is quite clear in this regard for Section 706(b) specifically states "no charge may be filed" with EEOC until "after proceedings have been commenced under the state or local laws."

The legislative history, if the same need be consulted in this regard, is equally clear. Senator Dirksen (with the respect to the enforcement of the Act) stated "we undertook to keep primary exclusive jurisdiction in the hands of state commissions for a sufficient period of time to let them work out their own problems at the local level." (110 Con. Rec. 13087) 1964.

Likewise, the regulation governing the agency at the time it received the charge provided "... the Commission may not accept the charge for filing..." 706(b) (30 Fed. Reg. 8407) unless state action had been had and a contemporaneous construction placed upon the Act by the Equal Employment Opportunity Commission stated in part that:

> "Where an unlawful employment practice is committed in a state to whose FEP agency the Commission is required to defer, Section 706(b) requires that a charge by the person aggrieved to be first filed with the state agency...." (LRX 1892e)

It should, therefore, come as no surprise that (at least to our knowledge) each court which has had the problem

before it has decided that both the EEOC and the court lacked jurisdiction over the subject matter until and unless the complaining party has proceeded under the available state law before filing a charge with the EEOC. See, for example, *Equal Employment Opportunity Commission v. Union Bank*, 408 F.2d 867 (C.A. 9); *International Brotherhood of Electrical Workers, Local 5 v. Equal Employment Opportunity Commission*, 398 F.2d 248 (C.A. 3) cert. denied at 393 U.S. 1021; *Edwards v. North American Rockwell Corporation*, 291 F.Supp. 199 (C.D. Cal.).

Although the Colorado statute requires a filing of a verified complaint "to commence a proceeding"[17] the Act is more lenient in that a verified charge is not required, but still provides that a written charge is necessary for Section 706(b) provides inter alia that:

> "If any requirement for the commencement of any such [state] proceedings is imposed by a state or local authority other than the requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceedings shall be deemed to have been commenced for the purpose of this subsection at the time such statement is sent by registered mail to the appropriate state or local authority."

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[17]CRS 1963 80-21-7(1):

> "Any person claiming to be aggrieved by a discriminatory or unfair employment practice may, by himself or his attorney-at-law, make, sign, and file with the commission a verified written complaint in duplicate which shall state the name and address of the person, employer, employment agency, labor organization, joint apprenticeship committee, or vocational school alleged to have committed the discriminatory or unfair employment practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The commission, a commissioner or the attorney general may in like manner make, sign and file such complaint."

The Act also recognizes that a written charge is necessary to commence a proceeding with the EEOC for Section 706 (a) states in part:

> "whenever it is charged in writing under oath by a person claiming to be aggrieved . . . EEOC will proceed to process the charge."

It is also significant to note that the 1968 regulation, which described the deferral procedure "in greater detail" specifically recognized the necessity that the state commission have a written charge upon which to act, for it states:

> "(b) The following procedures shall be followed with respect to cases arising in localities to which the Commission defers: (i) any document, whether or not verified, filed at any field office of the Equal Employment Opportunity Commission or at Washington, D.C., which may constitute a charge cognizable under Title VII shall be deferred to the appropriate state or local agency pursuant to the procedure set forth below . . . (ii) a copy of the original document shall be transmitted by registered mail, return receipt requested, to the appropriate state or local agency." (29 C.F.R. 1601.12)

A written charge has never been filed with the State Commission (except that filed in 1963), although Love apparently was advised to do so by the Colorado Civil Rights Director (A. 8).

The EEOC did not forward to the State Commission a copy of Love's charge received by it on May 23, 1966 to the State Commission. They merely orally told the state director that a charge had been filed with it. This occurred in a discussion between the director of the Colorado Civil Rights Commission and a representative of the EEOC concerning overall policy. The subject of Mr. Love came up as sort of a shop-talk thing. (A. 43-45)

Not only does this "oral advise" practice engaged in by the EEOC not comply with the statute, it tends to deny the states the initial opportunity to process discrimination

charges and thereby bypasses the Congressional intent that the states have the initial "primary and exclusive" jurisdiction over the matter. The court of appeals recognized the inherent defect in the procedure the EEOC attempts to have the courts approve when it stated "This opportunity cannot come by an advice from EEOC that a complaint has already been filed with it. This practice seeks to channel complaints first to the EEOC which then "advises" the state agency, gives it 60 days, and then the EEOC automatically proceeds. The statute does not contemplate this procedure." (A. 61)

The petitioners may argue that a written complaint filed with the state commission was an unnecessary step in this case because Love had previously been to the state commission in 1965 and asserted orally the same charges. We do not agree. At the outset it should be noted that Love's prior contracts with the state were in fact considered by the trial court and formed the basis for its holding that Love waited too long to proceed before the EEOC because the state had terminated its proceedings July 30, 1965, and Love's charge was not received by EEOC until May 23, 1966. The court of appeals in the original opinion affirmed the trial court on this finding. However, since the 1965 proceedings were subsequently held on rehearing to antedate the effective date of Title VII, and hence were ineffective to commence the period from which Love's time ran to file with the EEOC, to be consistent these prior state proceedings must also be disregarded for all other purposes.

There is another reason why the filing of Love's written charge with the State Commission would not have been a useless act—the record indicates the contrary. In the first place, Love's letter received by the EEOC on May 23, 1966 stated the Colorado Commission did not appear to understand his objective—that it thought he wanted to become a Pullman conductor, while in fact all he wanted to do was to receive the same rate of pay as a conductor when he performed what he claimed were the duties and responsibilities

of a conductor.[18] In the second place, although the Colorado Commission declined to take Love's case to a hearing in the summer of 1965, Reynolds, the director, testified that the philosophy of the Colorado Commission had undergone changes by 1966 and that the treatment of the alleged discrimination in 1966 would have been different than prior thereto for it had adopted significantly different definitions of discrimination and now recognized they could do something about agreements between labor and management which were discriminatory to minority people. (A. 37-38). Congress intended the states have the initial "primary and exclusive" opportunity to resolve such discrimination. Who is to say, then, that had Love's charge been forwarded to the Colorado Commission as required by law that a meaningful result would not have been obtained? Had Love returned to the Colorado Commission and filed a complaint (as it was apparently suggested he do by the Colorado Civil Rights Commission Director (A. 8)) or had the EEOC forwarded his written complaint to the state commission as the regulation requires, we believe the state would have not only understood his complaint but processed it in line with their enlightened definitions of discriminatory practices.

We submit that the requirement that such a written charge be filed before the state commission as is required by law is not unreasonable or onerous. To the contrary a written statement is necessary for it defines the charge so that the parties and the respective commissions are on notice; preserves a record; and allows for the orderly processing of the complaint.

We submit that this statutory requirement is not met merely by oral advice from the EEOC to the State Commission that a discrimination charge has been filed with it. For

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[18] Did the Colorado Civil Right Commission really know the nature of the charge when it "waived jurisdiction" June 1, 1966? We submit it probably did not because the written charge was not submitted to it.

this reason alone the trial court lacked jurisdiction over the subject matter.

B. Even if the "Oral Advise" Method is Sufficient to Commence a State Proceeding and Thereby Comply With Section 706(b), Mr. Love's Filing With the EEOC Was Not Timely and, Therefore, Did Not Comply With the Jurisdictional Mandate of Section 706(d).

Section 706(d) requires that an aggrieved party file his charge with the EEOC ". ... within 210 days after the alleged unlawful employment practice occurred, or within 30 days after receiving notice that the state or local agency has terminated the proceeding under state or local law, whichever is earlier. . .".

The filing of a timely charge with the EEOC, in accordance with Section 706(d), is an absolute condition to the federal court's jurisdiction over the subject matter as provided in the provisions of Section 706(e) of the Act. One of the earliest determinations to this effect came from the EEOC's general counsel who advised "An individual may not file suit in a federal district court under Section 706(e) through (g) of Title VII where he has not timely filed a charge with the Equal Employment Opportunity Commission." (Opin. letter 4/19/66, LRX 1892b) To our knowledge there is total uniformity among the courts to the same effect. See *Choate v. Caterpillar Tractor Co.*, 402 F. 2d 357 (C.A. 7, 1968); *Stebbins v. Nationwide Mutual Insurance Company*, 282 F.2d 267 (C.A. 4) cert. denied 390 U.S. 910.

The termination date of the state proceedings is the key to the issue as to whether Mr. Love made a timely filing with the EEOC. There are only two conceivable termination dates present here, namely, July 30, 1965 and June 1, 1966. These will be discussed in order.

The trial court found that Love had substantially complied with the statute so as to invoke the state machinery in 1965. The trial court then found that the state had terminated its proceedings on July 30, 1965 and had so advised Love. Since the earliest contact Love had with the EEOC was May 23, 1966, the trial court held that he had not filed a complaint with the EEOC within the time limits prescribed by Section 706(d). The court of appeals on rehearing held this was all immaterial since the 1965 acts complained of antedated the effective date of the Act.

We question this conclusion of the Court of Appeals because if the acts of discrimination "were continuing" as urged by Love, then the fact of such discrimination was at issue and had been considered by the Colorado Commission when it terminated its proceeding on July 30, 1965, which was after the effective date of Title VII of the Act.

If the 1965 proceedings before the Colorado Civil Rights Commission are disregarded for any reason, the only other termination date applicable is June 1, 1966. We fail to see how this date benefits Love. We have already shown that the letter received by EEOC May 23, 1966 was ineffective to initiate the action because Section 706(b) of the Act required a prior filing with the State Commission. To the same effect is the holding in *IBEW, Local 5, supra.* The only other communication between Love and the EEOC was the formal charge filed July 23, 1966, which was more than 30 days after termination of the state proceedings allowed for filing by Section 706(d). This, of course, is fatal to Love's position.

We believe we have already shown that the Equal Employment Opportunity Commission does not have authority to manipulate the filing dates. If more need be said, we direct the court's attention to another contemporaneous construction of the Act by the Equal Employment Opportunity Commission's general counsel which provided as follows: "A charge has one effective date with regard to all subdivisions of Section 706: The date when a sworn or unsworn

statement of facts indicating that an unlawful employment practice has occurred is received by the Commission. . . " C.G. Opinion 11/10/65 LRX 1892a.

Therefore, Love's charge to the EEOC received May 23, 1966 was premature, and thus the EEOC lacked subject matter jurisdiction. The charge filed July 23, 1966 was untimely because it was outside the statutory period prescribed by Section 706(d).

Unquestionably Title VII of the Civil Rights Act is remedial in nature. Nevertheless, in order to accomplish its remedial purpose, it is necessary that the EEOC act within the jurisdictional limits imposed by Congress. The charging party has 30 days after the State has terminated its proceeding to initiate action with EEOC, and this is quite analogous to the requirement of Section 706(e) which allows the aggrieved person 30 days after notification by the EEOC that conciliation has failed within which to commence a court action.

In *Goodman v. City Products Corporation*, 425 F.2d 702 (C.A. 6), it was held that a complaint filed in the court 31 days after receipt of a notice advising that conciliation has failed was barred under the provisions of Section 706(e). The court said:

> "As regards judicial extension of the time limitation to further the remedial purpose of the legislation, it is sufficient to cite the following language from the United States Supreme Court case of Kavanagh v. Noble, 332 U.S. 535, 68 S.Ct. 235, 92 L.Ed. 150 (1947), where, in dealing with a limitation provision in the tax law, the Court had this to say:
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> > 'Such periods are established to cut off rights, justifiable or not, that might otherwise be asserted and they must be strictly adhered to by the judiciary. Rosenman v. United States, 323 U.S. 658, 661, 65 S.Ct. 536, 89 L.Ed. 535. Remedies for resulting inequities are to be provided by Congress, not the courts.'" (425 F.2d 703-704)

This court has heretofore refused to disregard a six month statute of limitations as an unreasonable period in which to commence an action to resolve labor difficulties. In *Local No. 1424, International Association of Machinsts v. National Labor Relations Board*, 362 U.S. 411 (1960), this court reversed a decision of the National Labor Relations Board which had held that the remedial effects expected to be gained by enforcement were more important and took precedence over a time limitation in which enforcement must occur saying:

> "As expositor of the national interest, Congress, in the judgment that a six-month limitations period did 'not seem unreasonable,' . . . barred the Board from dealing with past conduct after that period had run, even at the expense of the vindication of statutory rights. 'It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute. * * *." *Id.* at 428-9.

It has been urged that the procedures provided by Congress under Title VII are complex, and Love should not be precluded from bringing the action because he attempted in good faith to comply with the Act. But it must be remembered that the State Director offered the further services of the state's Civil Rights machinery on June 30, 1965, and Love did not see fit to have the Director proceed. Instead, he went directly to EEOC thereby by-passing the state machinery to which Congress decreed the agency must defer. Be this as it may, the requirements of Congress that the charging party first utilize the state machinery (Section 706(b)) and then file with the EEOC within the statutory period provided for in Section 706(d) are precise and do not create unnecessary procedural bars to the federal courts. Congress decided, after long debate and for well-considered reasons, to create a new right and prescribe the means of obtaining it. As stated by the United States and the EEOC in their brief the Act imposed upon Love the burden of securing enforcement of Title VII by means of a private lawsuit. Love, however, ignored the precise statutory require-

ments of the Act. This he cannot do for it is contrary to the well-established legal principle that when rights asserted are statutory in nature, compliance with the statute in question is a jurisdictional prerequisite to the commencement of a civil action based thereon. *Edward v. North American Rockwell Corp.*, 291 F.Supp. 199 (C.D. Cal. 1968); *Choate v. Caterpillar Tractor Co.*, 402 F.2d 357 (C.A. 7 1968); *Stebbins v. Nationwide Mutual Insurance Company*, 282 F.2d 267 (C.A. 4) cert. denied 390 U.S. 910; *EEOC v. Union Bank*, 408 F.2d 867 (C.A. 9).

IV. THE CONTINUING VIOLATION THEORY CANNOT APPLY AND STILL GIVE ANY MEANING TO THE SEQUENCE OF FILING REQUIREMENTS OF SECTION 706(b) AND TO THE TIME REQUIREMENTS OF SECTION 706(d).

We do not believe that the question of whether a "continuing violation" theory tolls the statute is ripe for determination by this court because the Court of Appeals on rehearing affirmed the District Court on the ground that the "oral advise" method did not comply with the Act, and the manipulated procedures attempted by the EEOC were contrary to the Congressional intent.

Love, however, raises the question in his brief, and we will, therefore, briefly comment upon this.

Of crucial importance is the fact that Congress clearly intended, and so provided, that the state shall have the initial opportunity to handle discrimination charges; and, accordingly, imposed a filing sequence under Section 706(b) requiring that an aggrieved individual must first seek redress before the state body.

Interdependent with Section 706(b) is Section 706(d) which requires such an individual to file his charge within 30 days after the state has terminated its proceedings in order to preserve his right to be heard before the federal agency.

The cases cited for the proposition that a continuing violation tolls the time requirements of Section 706(d) concern only those charges which may be filed directly with the EEOC; none of these cases consider the continuing violations theory, in the situation which we have here, namely, the requirement that the individual first utilize the state machinery and then comply with the time requirements of Section 706(d). We submit there can be no such authority; such a holding would render meaningless the requirement of the Act that the charging party first go to the state and then file with the EEOC within the time prescribed by Section 706(d). To permit such an argument would be tantamount to saying that, yes, an individual must go to the state first and exhaust his remedies, but if a discrimination is of a continuing nature, the 30 day period to file with the EEOC as provided for in Section 706(d) may be disregarded; or it would be tantamount to saying that if the discrimination is of a continuing nature, he is not required to go to the state first as required by Section 706(b), but the EEOC may consider his complaint in the first instance. Obviously, this would destroy the sequence of filing requirements set forth by Section 706(b) and the time requirements of Section 706(d). Once the proceeding is started the continuing violation theory can have no application.

V. THE DEFECTS COMPLAINED OF BY THE PULLMAN COMPANY GO TO THE QUESTION OF THE COURT'S JURISDICTION OVER THE SUBJECT MATTER

Love asserts that the objections raised by The Pullman Company that Mr. Love did not comply with Section 706 (b) or 706(d) of the Act cannot be raised for the first time in the District Court. What Love fails to recognize is that these defects go to the question of the court's jurisdiction over the subject matter of the case. *EEOC v. Union Bank*, supra; *IBEW, Local 5 v. EEOC*, supra, *Choate v. Caterpillar Tractor*, supra; *Stebbins v. Nationwide Mutual Ins. Co.*, supra.

Subject matter jurisdiction cannot be waived; it cannot be supplied by the consent of the parties; and objection to lack of such jurisdiction may be interposed at any stage of the action. Federal Practice and Procedure, *Barron & Holtzoff*, Vol. 1A, Sec. 370. Indeed, if the record does not affirmatively show jurisdiction over the subject matter, this court "must on its own motion so declare, and make such orders as will prevent (the district court) from exercising an authority not conferred upon it by statute." *Minnesota v. Northern Securities Company*, 194 U.S. 48, 61.

Administrative agencies are not exempt from this long established tenent of the law. *Rigby v. Rassmussen*, 275 F. 2d 861 (C.A. 10).

The Pullman Company properly asserted the defenses that the EEOC and the Court lacked jurisdiction over the subject matter in the District Court.

CONCLUSION

For the foregoing reasons, the decision below should be affirmed.

Respectfully submitted,

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APPENDIX A

STATUTORY PROVISIONS AND REGULATIONS

Section 706 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5, provides:

> (a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this subchapter has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.
>
> (b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice

or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(c) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State, which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(d) A charge under subsection (a) of this section shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed

the procedure set out in subsection (b), of this section, such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) of this section (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this subchapter the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) of this section or the efforts of the Commission to obtain voluntary compliance.

The regulation in effect at the time the charge in this case was lodged with the Equal Employment Opportunity Commission (30 Fed. Reg. 8407) provided:

> In any instance in which an aggrieved person seeks to file a charge and it appears from the charge or from other information that the aggrieved person has not begun proceedings before a State or local authority pursuant to section 706(b) of Title VII, the Commission may not accept the charge for filing, but shall assist the aggrieved person in complying with Section 706(b).

The present regulation of the Equal Employment Opportunity Commission regarding referrals, 29 C.F.R. 1601.12, provides:

> (a) In order to give full weight to the policy of section 706(b) of the Act which affords State and local fair employment practice agencies that fall within the provisions of that section an opportunity to resolve disputes involving alleged discrimination concurrently regulated by Title VII of the Civil Rights Act of 1964 and State or local law, the Equal Employment Opportunity Commission adopts the following procedures with respect to allegations of discrimination filed with the Commission where there is no evidence that such allegations were earlier presented to the State or local agency. It is the intent of the Commission to thereby encourage the maximum degree of effectiveness in the State and local agencies. The Commission shall endeavor to maintain close communication with the State and local agencies with respect to all matters forwarded to such agencies and shall provide such assistance to the State or local agency as is permitted by law and is practicable. It is the experience of the Commission that because of the complexities of the present procedures, persons who seek the aid of the Commission are often confused and even risk loss of protection of the Act. Accordingly, it is the intent of the Commission to simplify filing procedures for parties in deferral States and localities, and thereby avoid the accidental forfeiture of important Federal rights.

(b) The following procedures shall be followed with respect to cases arising in the localities to which the Commission defers:

(1) Any document, whether or not verified, filed at any field office of the Equal Employment Opportunity Commission or at Washington, D.C., which may constitute a charge cognizable under Title VII, shall be deferred to the appropriate State or local agency pursuant to the procedures set forth below.

(i) All such documents shall be date and time stamped on receipt.

(ii) A copy of the original document shall be transmitted by registered mail, return receipt requested, to the appropriate State or local agency.

(iii) The aggrieved party shall be notified, in writing, that the document which he sent to the Commission has been forwarded to the State or local agency pursuant to the provisions of section 706(b), and that unless the Commission is notified to the contrary, on the termination of State or local proceedings, or after 60 days have passed, whichever comes first, the Commission will consider the charge to be filed with the Commission and commence processing the case. Where the State or local agency terminates its proceedings within 60 days of the date of receipt of the document without notification to the Commission of such action, the date on which the aggrieved party is notified of the termination of the State or local action shall be deemed to be the date that the document was filed as a charge with the Commission.

(iv) The sixty-day period shall be deemed to have commenced on the receipt of the document by the State or local agency as evidence by the date indicated on the return receipt. On notification of termination of State proceedings or the expiration of 60 days, whichever comes first, the Commission will consider the charge to be filed with the Commission and commence processing the case.

(v) In cases where the document is filed with the Commission more than 150 days following the alleged act of discrimination but less than 210 days therefrom, the case shall be deferred pursuant to procedures set forth above: *Provided, however,* That unless the Commission is earlier notified of the termination of the State or local proceeding, the Commission will consider the charge to be filed with the Commission on the 209th day following the alleged discrimination and will commence processing the case. Where the State or local agency terminates its proceeding prior to the 209th day following the alleged acts of discrimination, without notification to the Commission of such action, the date on which the aggrieved party is notified of the termination of the State or local action shall be deemed to be the date that the document was filed as a charge with the Commission.

APPENDIX B

Counsel General Opinions of November 8, 1965, and December 2, 1965; EEOC Decision of December 30, 1965 (LRX 1892e) provide:

Where an unlawful employment practice is committed in a state to whose FEP agency the Commission is required to defer, Section 706(b) requires that a charge by the person aggrieved be filed first with the state agency. If he thereafter wishes the Commission to assert jurisdiction, he may file his charge with the Commission at any time after 60 days (120 days during the first year in which the state law is effective) from the date the state proceeding was commenced or earlier if such proceeding has been earlier terminated, but the charge must be filed not later than 210 days after the alleged unlawful practice occurred or within 30 days of receipt of notice of the termination of the state proceeding, whichever is earlier.

Where a charge is filed with the Commission alleging the commission of an unlawful employment practice in a state or locality to whose FEP agency the Commission is required to defer, the Commission will refer that charge to the appropriate state or local agency. Sixty days after the commencement of such state or local proceedings (or 120 days in appropriate cases), the Commission will notify the charging party that the 60-day (or 120-day) period has expired and inquire whether or not he wishes the Commission to assert jurisdiction. If the charging party responds affirmatively, the Commission will proceed with its investigation.